Supreme Court, U.S.
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No. _____

2004 TERM

In The

SUPREME COURT OF THE UNITED STATES

Charles Gray,

Petitioner,

v.

Foxworthy, Inc.,
A Nevada Corporation,

Respondent.

On Petition For A Writ of Certiorari To The
Supreme Court of the State of Georgia

PETITION FOR WRIT OF CERTIORARI

Charles Gray, In Pro Per
216 Oak Street
Hogansville, GA 30230
706 637 6187

QUESTIONS PRESENTED

I.

. WHETHER COURT'S DETERMINATION THAT O.C.G.A. 9-11-52 DID NOT TOLL THE TIME FOR APPEAL IS UNCONSTITUTIONAL BECAUSE IT REQUIRED PETITIONER TO ABROGATE SUBSTANTIVE RIGHTS (PROPERTY RIGHTS) (PETITION FOR REDRESS OF GRIEVANCE) IN ORDER TO OBTAIN A PROCEDURAL DUE PROCESS RIGHT.

II.

CAN PROPERTY BE TAKEN WITHOUT NOTICE? [IS THE SUPREME COURT OF GEORGIA'S OPINION IN *HADEN V. LIBERTY CO.*, 183 GA. 209, 211 (1) (188 SE 29) (1936) UNCONSTITUTIONAL AS IT ALLOWS THE TAKING OF PROPERTY WITHOUT NOTICE?]

PARTIES TO ACTION BELOW

The parties to the proceeding below were Petitioner Charles Gray in his proper person and respondent Foxworthy, Inc., a Nevada Corporation.

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF GEORGIA

Charles Gray, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Georgia.

OPINIONS BELOW

The opinions of the Supreme Court of Georgia Appendix IV and V (*infra*) are unreported.) Appendix I has the Final Order from the Superior Court of Fulton County Georgia. Appendix II has the Special Master's Report which was adopted by the Final Order (Appendix I). Appendix III is Superior Court's Denial of the Motion for Reconsideration.

JURISDICTION

The Supreme Court of Georgia entered its judgment (App. I , *infra)* on July 14, 2003. A Motion for Reconsideration was was denied by the Supreme Court of Georgia (App. 2) on September 05, 2003. The jurisdiction of this court is invoked under 28 U. S. C. Section 1254 (Rule 10 (b) (c)).

STATUTORY PROVISIONS INVOLVED

Argument I

Official Code of Georgia 5-6-38: (in pertinent part)

(a) A notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of; but when a motion for new trial, a motion in arrest of judgment, or a motion for judgment

notwithstanding the verdict has been filed, the notice shall be filed within 30 days after the entry of the order granting, overruling, or otherwise finally disposing of the motion...."

Offical Code of Georgia 9-11-52 (in pertinent part)

(c) Upon motion made not later than 20 days after entry of judgment, the court may make or amend its findings or make additional findings and may amend the judgment accordingly. If the motion is made with a motion for new trial, both motions shall be made within 20 days after entry of judgment. . . . . [W]hen findings or conclusions are not made prior to judgment to the extent necessary for review, failure of the losing party to move therefore after judgment shall constitute a **waiver** of any ground of appeal which requires consideration thereof.

Argument II – Statutes Involved

Fifth Amendment to the United States Constitution:

"No person shall be [d]eprived of life, liberty, or property, without due process of law . . . "

Fourteenth Amendment to the United States Constitution:

"[N]or shall any state deprive any person of life, liberty, or property, without due process of law;"

OCGA 48-3-9.

(a) Whenever any real estate is levied upon by the sheriff for taxes, it shall be the sheriff's duty before proceeding to advertise the property for sale as provided by law to give 20 days written notice of the levy to the record owner of the property and the record owner of each security deed and mortgage affecting such property as provided in subsection (b) of this Code section.

(b) In order to entitle any owner of a security deed or mortgage to notice as provided in subsection (a) of this Code section, the name and address of such owner must be stated: (1) on the face of a properly recorded security deed or mortgage from the owner of the property; or

Article I, Section I, Paragraph I, of the Constitution for the State of Georgia.

"No person shall be deprived of life, liberty, or property except by due process of law.

Official Code of Georgia (OCGA) 48-3-10. (in pertinent part)

"The form of the notice required by Code Sect. 48-3-9 to be given by the sheriff to the **record** owner of the property and the owner of each security deed or mortgage complying with Code Section 48-3-9 shall be in substance as follows ... ."

The following codes of Georgia also required Notice that was required to be given in the instant matters:

1. Notice to tenant Charles Gray as required by OCGA 48-3-19(b)(1)

2. Notice to tenant Charles Gray as required by OCGA 9-13-13
3. Notice to tenant Charles Gray as required by OCGA 48-45-46
4. Notice to tenant Charles Gray as required by OCGA 48-4-45
5. Notices Statutorily Required to Owner John B. Nelson:
    a. Notice of Assessment (OCGA 48-2-45)
    b. Demand for Payment (OCGA 48-2-54)
    c. Notice of Execution (OCGA 48-3-3)
    d. Notice of levy of delinquent Taxes (OCGA 48-3-9)
    e. Notice of Petition to Reduce Execution to Judgment
    (OCGA 48-3-14(c) and (f), OCGA 48-3-13
    f. Copy of Any Court Order pursuant to OCGA 48-3-16
    g. Notice of Transfer of Execution (OCGA 48-3-19(b)(1);
    (c)(2)(E) and (c)(3)
    h. Notice of Entitlement O.C.G.A. 23-3-66
    i. Notice of Barrment of Redemption 48-4-47(a)(2)
    j. Execution entered in the Superior Court of owner John Nelson's County of residence pursuant to OCGA 48-3-19, OCGA 9-13-46
    k. Notice of Redemption 48-4-45(a)(2)
    l. Notice of Transfer OCGA 48-3-19(c)(2)(3)

STATEMENT OF THE CASE

FACTUAL BACKGROUND

1. On April 08. 2002, Respondent Foxworthy, Inc., (hereinafter Foxworthy) filed a quia timet [quiet title] suit in the Superior Court of Fulton County Georgia styled ***Foxworthy, Inc., A Corporation vs. A Tract of Land Being known as 897 Edgewood Ave., Atlanta, Fulton County Georgia, John Nelson, Charles Gray et al.*** *concerning property it had allegedly purchased on the Fulton County Court House steps in 2000.*

2. On or about May 14, 2002, Fulton County Superior Court Judge Stephanie Manis assigned the case to a Special Master.

3. On or about May 17, 2002, Petitioner Gray filed a Motion to Dismiss due to a **complete notice failure** concerning the events surrounding Foxworthy's acquisition of the property.

4. During the proceedings of the case the following evidence was discovered and produced to the court. Facts showed that Respondent Foxworthy and associates had systematically implemented a scheme to defraud Fulton County citizens of their properties which entailed the following corrupt influences:

a. Correspondence from Foxworthy to the Fulton County Sheriff's Office that indicated that NOTICE was not required by the Sheriff's office in the tax execution process which directly affected the Sheriff's Office performance. Said correspondence indicated that the Sheriff's Office could do no wrong.

b. Foxworthy's corrupt influence on the judicial system of Fulton County by its repeated ability to appoint its own Special Masters, thus controlling the court opinions. in the

instant matters. The "court" appointed special master had adjudicated approximately a dozen other cases for Respondent Foxworthy. Each and every case adjudicated had the tale tale problem of no notice to the owners either by the tax commissioner's office, the Sheriff's office or by Foxworthy and its associates[1]. Court refused to address the issue of the corrupt appointment of the special master.

c. Foxworthy and its associates' purposeful corrupt influence on the Fulton County Data System by secreting the majority of the delinquent tax payers' data system and making the data non transparent; while at the same time manipulating the data;

d. Foxworthy and its associates' actual manipulation of the notices being sent out from the Fulton County Sheriff's Office;

e. Foxworthy and its associates' corrupt influence on the General Assembly of Georgia (passage of 48-3-19 **now repealed** and related laws.

f. Foxworthy and its associates' wielding an undue economic influence on cash strapped Fulton County Georgia; (the ability to "loan" Fulton County thirty five million dollars at a pop); said undue economic influence reflected in the Sheriff's Office, Courts, Special

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[1] Foxworthy and its associates refer to Foxworthy's associations with Vesta Holdings. Heartwood II. Bank Atlantic and mutual lawyers working not only for Foxworthy and it associates but for the Fulton County Tax Commissioner's Office.

Masters, and the Fulton County data systems being non transparent to the public taxpayers;

g. Foxworthy and its associates' retaliatory behavior on members of the General Assembly in an attempt to thwart the Legislature's attempt to get the Fulton County Notice problems under control;

h. Foxworthy and its associates corrupt influence in Georgia Court of Appeals case *Harper v.Foxworthy,* i. e. omission of the material fact that Foxworthy was not a bona fide buyer but had obtained the property through fraud, i. e. selected the property because it had notice problems knowing that in Georgia notice is not mandated by law, having actually manipulated the meaning of notice to the Sheriff's Office, manipulated notices out of the physical mail and refusing to give notices in ongoing court cases;

i. Foxworthy and its associates' ongoing scheme of targeting Fulton County properties that have notice problems, out of town owners, that are valuable, and that they can charge exorbitant redemption fees.

j. Foxworthy and its associates' ongoing relentless battle with the Sheriff's office in order to be able to purchase properties where the owners have gotten no notice and have no ideal what is transpiring. (Repeated litigation in the court on every point with the Sheriff's office.)

Foxworthy and its associates have systematically attacked every area of Fulton County and the law in order to abolish the need for notice and to allow them to buy properties on the courthouse steps at pennies on the dollar and then charge exorbitant amounts for redemption. In the instant matters a

$1200 tax bill turned into a demand for approximately $250,000 (bills of credit). Only one county in all of Georgia's 150 plus counties have notice problems of any magnitude, Fulton County, Georgia, and only one group of individuals have been repeatedly associated with selecting and buying property on the courthouse steps that have notice problems: Foxworthy and its associates.

5. On October 29, 2002, Petitioner filed a Motion for Judge Stephanie Manis to recuse due to bias, prejudice, extrajudicial bias and bent of mind on the statutory demands and constitutional requirement of notice. No notice could be produce in the matters before the court. The court opined that Notice in Georgia from the Sheriff's Office was directory, or done if the Sheriff should so desire. App. I, II, III

6. On November 12, 2002, Judge Manis refused to recuse herself based on her bent of mind on the constitutional issue of notice and her refusal to address the repeated frauds of Respondent Foxworthy.

7. On November 25, 2002, Petitioner Gray filed a Motion for Certificate of Immediate Review.

8. On November 27, 2002, a Final Judgment and Order was entered by the court against Petitioner Gray and others.

9. On December 16, 2002, Petitioner Gray filed a Motion for Reconsideration with Request for Conclusions of Facts and Law with certainty pursuant to Official Codes of Georgia (O.C.G.A.) 9-11-52 (c).

10. On January 16, 2003, the court denied Petitioner's Motion for Reconsideration without addresing material issues presented to the court for reconsideration.

11. On February 17, 2003, Petitioner filed a Notice of Appeal and then on February 18, 2003, filed an amended Notice of Appeal.

12. On June 3, 2003 the case was docketed in the Supreme Court of Georgia.

13. On June 23, 2003 petitioner filed his appeal brief.

14. On July 14, 2003, the Supreme Court denied Petitioner Gray's Appeal stating that it was untimely.
15. On July 24, 2003, Petitioner Gray filed a Motion for Reconsideration
16. On September 05, 2003, the Supreme Court of Georgia denied the Motion for Reconsideration.
17. On December 04, 2003, Petitioner Gray petitions the Supreme Court of the United States for certiorari to the Supreme Court of Georgia in the instant matters.

REASONS FOR GRANTING THE PETITION

In Fulton County Georgia the constitutional right to Notice before property can be taken has been abolished.

The Court of Appeals in 2002, relying on earlier Supreme Court decisions in dictum in *Harper v. Foxworthy* declared that even though statutory provisions stated that Notice SHALL be given that NOTICE requirements were not mandatory for the Sheriff's Office, but directory.

Due to this interpretation of the law, the Fulton County Georgia judicial system has been plagued with cases where taxpayers did not get notice as required by statutory law and ended up with loss of their properties.

The decision of the Supreme Court that property can be taken without Notice by the Sheriff's department is repugnant to the constitution and unconstitutional.

Court should hear case as it involves one of our most ancient and fundamental rights and without NOTICE there are no property rights, i. e. the beginning of the end.

ARGUMENTS

I.

WHETHER COURT'S DETERMINATION THAT O.C.G.A. 9-11-52 DID NOT TOLL THE TIME FOR APPEAL IS UNCONSTITUTIONAL BECAUSE IT REQUIRED PETITIONER TO ABROGATE SUBSTANTIVE RIGHTS (PROPERTY RIGHTS) (PETITION FOR REDRESS OF GRIEVANCE) IN ORDER TO OBTAIN A PROCEEDURAL DUE PROCESS RIGHT.

The Supreme Court of Georgia denied Petitioner's Appeal as being late stating that Petitioner's Motion for Reconsideration did not toll the time for appeal, and thus Petitioner had filed his appeal late.

The findings of the Supreme Court of Georgia concerning whether a Motion for Reconsideration tolls the time period for filing an appeal is unconstitutional since it requires one to give up substantive due process rights and rights to petition in order to get procedural due process rights which are under color of court rule.

O. C. G. A. 5-6-38 states (in pertinent part):

> (a) A notice of appeal shall be filed within 30 days after entry of the appealable decision or judgment complained of; but when a motion for new trial, a motion in arrest of judgment, or a motion for judgment notwithstanding the verdict has been filed, the notice shall be filed within 30 days after the entry of the order granting, overruling, or otherwise finally disposing of the motion…."

O. C. G. A. 5-6-38 allows three motions to toll the time for appeal: Motion for New Trial, Motion for Arrest of Judgment, and a motion for judgment notwithstanding the verdict.

The Official Code of Georgia 9-11-52 (in pertinent part) states:

> **(c)** Upon motion made not later than 20 days after entry of judgment, the court may make or amend its findings or make additional findings and may amend the judgment accordingly. If the motion is made with a motion for new trial, both motions shall be made within 20 days after entry of judgment. . . . . **[W]hen findings or conclusions are not made prior to judgment to the extent necessary for review, failure of the losing party to move therefore after judgment shall constitute a waiver of any ground of appeal which requires consideration thereof. [emphasis added by Petitioner Gray)**

Pursuant to 9-11-52 (c), above, Petitioner Gray filed a Motion for Reconsideration in the Superior Court of Georgia **in *order not to wave any grounds of appeal which would require consideration there.***

The direct consequences of Petitioner Gray attempting to get redress on the critical issues that the judge had not ruled on and had ignored was that he was penalized by the Supreme Court with its denial of his appeal.

Had petitioner not filed his Motion for Reconsideration, he would have been timely on his appeal, but waived critical issues that were not addressed, namely that the court had refused to address the issued that Respondent Foxworthy was not a bona fide purchaser of the property, had corruptly had the special master appointed to make determinations that were in line with Respondent Foxworthy's own view of "notice" and that

Respondent Foxworthy has repeatedly purposefully defrauded people of property in Fulton County by it systematic corrupting influence on the Fulton County and impairment of the notice requirements.

In order for Petitioner to take an appeal, (procedural due process) substantive rights to due process and his substantive right to grieve would have been negated.

Petitioner was before the superior court from the the start with substantive due process violations, i. e., that in Fulton County Georgia, the Sheriff was allowed to remove property from individuals without notice or even attempting notice. Petitioner was before the court with a list of notice violations (See above, statutory provisions involved and Argument II, at page 17)

O.C.G.A. 9-11-52 (c) is clear:

> [W]hen findings or conclusions are not made prior to judgment to the extent necessary for review, failure of the losing party to move therefore after judgment **shall constitute a waiver of any ground of appeal** which requires consideration thereof. [emphasis added by Petitioner Gray)(Of course in the instant matters where Petitioner Gray is on the other side of the fence, **shall** above means absolutely.)

Petitioner Gray would loose his right to grieve if he did not go strickly by O. C. G. A. 9-11-52(c). This is in light of the fact that the Superior Court Judge was totally bent on the issue of notice and refused to address Petitioner's contentions that notice was required by the Constitution of the United States and the Constitution of the State of Georgia and numerous statutory provisions which contain the word "SHALL"

The Supreme Court in *Simmons v. United States*, 390 U S 389, at page 394 stated:

> **"[W]e find it intolerable that one constitutional right should have to be surrendered in order to assert another."**

See also: See v. Seattle, 387 U.S. 541, 87 S. Ct. 1737, 18 L. Ed..2d 943 9 (1967) Penalty for asserting constitutional rights.

Petitioner had a choice to either surrender his defenses and issues before the court, i. e. his constitutional right to access to the court, his right to petition for redress of grievances, his substantive rights of property and to notice all under color of court rule, or to loose his timely appeal. Georgia Constitution guarantees Petitioner's right to petition to the government for redress at Art. 1, Sec. 1, Par. IX: *Right to assemble and petition.* **The people have the right** . . .[t]o apply by petition or remonstrance to those vested with the powers of government for redress of grievances.

In the instant situation the appeal would have been useless as the issues and defenses would have been waived, a catch 22 ***under color of court rule*** and in violation of 28 U.S.C. 2072 (Rules of the Court cannot be used to abrogate Constitutional rights.)

Pursuant to the Constitution of the United States at Amendments, 4 and 5. "There should be no sanction or penalty imposed on one because of his exercise of constitutional rights. *Sherar v. Cullen*, 481 F. 2d 946 (1973).

Penalty imposed on Petitioner Gray because he exercised his right of redress of grievance in order to avoid waiving his issues is intolerable as it caused him to waive one constitutional

right in order to get another and caused the Supreme Court to deny him any relief. This was all done under court rule, while Petitioner was suffering deprivation of constitution rights from the start.

28 U. S. C. 2072 states that courts cannot use rules of the courts to violate substantive rights. Here, the courts have used procedural rules (color of court rules) to cause him to abrogate his substantive rights and to violate the substantive right of Charles Gray to petition for redress of grievances, his due process rights (Notice), and his right to access to the court in violation of 28 U. S. C. 2072.

Petitioner was in the court from the start trying to protect substantive property and due process rights being impaired by the courts, Foxworthy and others.

Petitioner's rights were violated as the constitutional issues of notice were ignored. Petitioner, then attempting to appeal the unresponsive final order of the court, was forced either to have access to the court by filing his Motion for Reconsideration with Conclusions of Facts and Law in order to save his issues on appeal or wave them. Meanwhile, his time for appeal was not tolled. Again catch 22.

The Supreme Court in *Harman v. Forseenius*, 380 U. S. 528, 540, 85 S. Ct. 1177, 1185 1965) stated, "It has long been established that a State may not impose a penalty upon those who exercise a right guaranteed by the Constitution. *Frost v. Frost Trucking, Co., v. Railroad Comm'n of California*, 271 U. S. 583. 'Constitutional rights would be of little value if they could be . . . indirectly denied,' *Smith v. Allwright*, 321 U. S. 649, 664, or 'manipulated out of existence.' *Gommillion v. Lightfoot*, 364 U. S. 339, 345. What use is getting a court to address the concerns before it, after the court has ignored the issues, and then to loose appellate review because such action was taken? The consequence to the court is that if the final order is not directed to the correct issues, and either the plaintiff or

defendant tries to get answers so he doesn't wave them, then the appeal is lost and the court gets by. The court's ruling would seem to be contrary to the law of nature, as it would appear that in the instant matters, the court fares better by refusing up front to address issues, just opposite what the demands of justice require.

Under the Georgia Constitution at Art. 1., Sec., 1, Paragraph XII petitioner has a **right** to prosecute or defend his case. **"No person shall be deprived of the right to prosecute or defend, either in person or by an attorney, that person's own cause in any of the courts of this state."** Petitioner would have little right to the court without getting an opinion from the court *on his issues.* In the instant matters the cost at an attempt to get an opinion concerning his substantive due process rights, while petitioning the court, caused the petitioner to be punished.

The Supreme Court of the United States in both *See,* supra,. and in *Reisman v. Caplin,* 375 U. S. 440, 84 S. Ct. 508, 11 L. Ed. 2d 459 (1964) reflect the obvious concern that there be no sanction or penalty imposed upon one because of his exercise of constitutional rights. *See also: Spevack v. Klein,* 385 U. S. 511, at 515, 87 S. Ct. 625, 17 L. Ed.2d 574 (1967); *Griffin v. California,* 380 U. S. 609, 85 S. CT. 1229, 14 . Ed. 2d 106 (1965); *Garrity v. New Jersey,* 385 U. S. 493, 87 S. Ct. 616, 17 L. Ed.2d 562 (1967)(companion case to Spevack.)

Court's interpretation that OCGA 9-11-52 (c) did not toll the time for an appeal is unconstitutional since in order to file a Motion for Reconsideration, (9-11-52 (c) one right had to be waived in order to assert another.

A motion for reconsideration tolls the time for an appeal in the Supreme Court, the United States Court of Appeals and the Nevada Court rules:

Supreme Court Rules

Supreme Court Rules 13 (1) and (3) indicate that the Motion for Reconsideration tolls the time for filing certiorari to the Supreme Court. This is in conflict with Georgia rules.

United States Appeal Court Rules

United States Federal Rules of Appellate Rule 4, (4) tolls the time for filing an appeal after a Motion for Reconsideration has been filed. This is in conflict with Georgia rules.

Nevada Court Rules

Nevada Rule of Civil Procedure, NRCP 59e, Motion to Amend or Alter Judgment "does toll the 30 day time limit for appeal." Morrell v. Edwards, 98 Nevada 91, 93 (1982), 640 Pacific 2nd 1322 at 1324. This is in conflict with Georgia rules. Respondent Foxworthy is a Nevada corporation.

Court's decision was arbitrary and capricious and violated the constitutional rights of the Petitioner.

ARGUMENT II.

CAN PROPERTY BE TAKEN WITHOUT NOTICE?

In the below related case, *Foxworthy v. A Tract*, The Fulton County Superior Court found that notice requirements were only directory to the Sheriff in the tax sale execution process. Appendix I (Paragraph 4), Final Order of Court adopting Special Master's Report and Appendix II (paragraph 4 & 5 of the Special Master's Holdings of Law

The Fulton County Superior Court relied on the Court of Appeals of the State of Georgia where it had found and held that the serving of the notices under O C G A sections 48-3-9 & 10 imposed upon the Sheriff only a "directory" duty, not a mandatory one. *Harper v. Foxworthy, Inc., et al.*,, 254 Ga. App. 495; 562 S.E.2d 736 (2002)[2] The Court in its opinion stated, in pertinent part as follows: "Moreover, even if Harper was not provided the requisite notice of the tax sale, this failure will not suffice to set aside the tax sale of [the] property," citing *GE Capital Mtg. Services, v. Clack, infra; Haden v. Liberty Co.*, 183 Ga. 209, 211 1 188 SE 29) (1936). "It is the rule in this state that defects in following the notice provisions of the tax sale statute may give an injured party a claim for damages, but will not render the tax sale or the deed there from void." (Citation omitted.) *Clack, infra at 83 (1) (a).* Appendix II, Paragraph 4 & 5, Special Masters Holdings of Law.

Harper, *supra* stated that the Sheriff's duty to give notice was ***directory and not mandatory.*** This interpretation of the law is a use of court rules to abrogate a substantive right.

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[2] Foxworthy, Inc., buys properties at tax sales on the courthouse steps in Fulton County Georgia. *Harper v. Foxworthy,Inc. supra*, is a related case involving Respondent Foxworthy, Inc., and the lack of notice issue. Petitioner Harper did not assert that Foxworthy was not a bona fide purchaser.

Black's Law Dictionary Sixth Edition (1990) defines **directory**:

> **Directory,** *adj.* A provision in a statute, rule or procedure, or the like, which is a mere direction or instruction of no obligatory force, and involving no invalidating consequence for its disregard, as opposed to an imperative or mandatory provision, which must be followed.

The Constitution of the United States of America at

Amendment V states that

"No person **shall** be [d]eprived of life, liberty,or property, without due process of law…";

Amendment XIV, Section 1 states that

"[N]or **shall** any state deprive any person of life, liberty, or property, without due process of law..

The Constitution of the State of Georgia states at

Art. 1, Sec. 1, Par. 1.:

> "No person **shall** be deprived of life, liberty or property except by due process of law."

"Minimal" procedural due process is that parties whose rights are to be affected are entitled to be heard and, in order that they may enjoy that right, ***they must be notified***. Fuentes v Shevin, 407 U. S. 67, 79, 92 S. Ct 1983, 1994 32 L. Ed. 2d 556. (emphasis added)

The Georgia Courts' (Harper, *supra*,) decision that notice is not mandatory, but directory means that Notice does not have to be done. This is contrary to imperativeness of both the language of the Constitution of the State of Georgia and the Constitution of the United States both which use the words

shall and the Supreme Court's opinion in *Fuentes, supra.*, "they **must** be notified." The question here is not whether one receives notice or not, the question is, **"Is notice just a directory activity on the part of the Sheriff and not required?"**

Complementary to the above unconstitutional activity is the fact that while strict compliance with notice provisions are required under Georgia law, *see Wallace v. President Street, L. P.*, 263 Ga. 239, 430 S.E. 2d 1 (1993), "the rule in this state [is] that defects in following the notice provisions of the tax sale statue may give an injured party a claim for damages, but will not render the tax sale or the deed void therefrom void" as against a bona fide purchaser. *GE Capital Mortgage Services, Inc., v. Clark*, 271 Ga. 82, 83, 515 S.E.2d 619, 621 (1999) (emphasis added); *Percy Wilson Mortgage & Finance Corp. V. Sizemore*, 167 Ga. App. 211, 305 S.E.2d 903 (1983). *See also Shah v. Taco Del Sur, Inc.*, 257 Ga. App. 224, 570 S.E.2d 654 (2002). Thus requirements for notice change upon whether the purchaser is a bona fide purchaser or not. Conclusion would seem to appear that the statutory requirement of notice is defined by the motive of the purchasers. Property transfers to the new owner whether there was notice or not; the recourse to the victimized taxpayer is to sue the Sheriff while loosing the property. This, also, is patently unconstitutional because it allows property to be transferred without notice.

"The fundamental guaranty of due process is absolute, and not merely relative." *Hammond Packing Co. v. Arkansas*, 212 US 322, 53 L. Ed. 530, 29 S. Ct. 370. And it has been said that "without [due process] the right of private property could not be said to exist, in the sense in which it is known to our laws." *Ochoa v. Hernandez y Morales*, 230 US 139, 57 L. Ed 1427, 33 S. Ct. 1033

In the instant matters, Petitioner Gray presented to the Superior Court of Fulton County a lengthy list of notices that

were required to be given in the quiet title matter. **None** were given as required by law.

The General Assembly of Georgia has codified the following material notice requirements that **were not given** in *Foxworthy v. 897 Edgewood Ave. N. E* case gravaman of these matters.:

1. Notice to tenant Charles Gray as required by OCGA 48-3-19(b)(1)
2. Notice to tenant Charles Gray as required by OCGA 9-13-13
3. Notice to tenant Charles Gray as required by OCGA 48-45-46
4. Notice to tenant Charles Gray as required by OCGA 48-4-45
5. Notices Statutorily Required to **Record** Owner John B. Nelson:
    a. Notice of Assessment (OCGA 48-2-45)
    b. Demand for Payment (OCGA 48-2-54)
    c. Notice of Execution (OCGA 48-3-3)
    d. Notice of levy of delinquent Taxes (OCGA 48-3-9)
    e. Notice of Petition to Reduce Execution to Judgment (OCGA 48-3-14(c) and (f), OCGA 48-3-13
    f. Copy of Any Court Order pursuant to OCGA 48-3-16
    g. Notice of Transfer of Execution (OCGA 48-3-19(b)(1);
        (c)(2)(E) and (c)(3)
    h. Notice of Entitlement O.C.G.A. 23-3-66
    i. Notice of Barrment of Redemption 48-4-47(a)(2)
    j. Execution entered in the Superior Court of owner John Nelson's County of residence pursuant to OCGA 48-3-19, OCGA 9-13-46
    k. Notice of Redemption 48-4-45(a)(2)

l. Notice of Transfer OCGA 48-3-19(c)(2)(3)

The Superior Court of Fulton County ruled in *Foxworthy, Inc., v. 897 Edgewood Ave., N. E.*, **the instant matter**, that lack of notice was not relevant as the Appeals Court had ruled in *Harper v. Foxworthy, Inc., supra*, that notice was only directory and not mandatory. See Appendix I, paragraph 4 and adopted Special Masters Report, Appendix II, paragraph 4 & 5.

This ruling is contrary and repugnant both to the Constitution of the United States and the Constitution of the State of Georgia. This ruling is contrary to the laws of Georgia and effectively abolishes both the law and the constitutions and abrogates the rights of citizens and constitutes a deprivation of the same rights.

Lack of Notice **is also a fraud**. The Official Codes of Georgia (O.C.G.A.) 23-2-51 (b) states that "[c]onstructive fraud consists of any act of omission or commission, contrary to legal or equitable duty, trust, or confidence justly reposed, which is contrary to good conscience and operates to the injury of another." The omission of a required notice is a constructive fraud under O.C.G.A. 23-2-51.

The Supreme Court of Georgia's earlier decision in *Haden, supra*, and now being revitalized through *Harper v. Foxworthy, Inc.*, (2002) has stated that notice is not mandatory but is directory. This lax interpretation of one of our most fundamental rights is contrary to fundamental laws and is unconstitutional.

Can property be taken without notice? Under Georgia law, yes, because notice is not mandatory but directory.

The court's interpretation of the law is also constitutionally impaired because it allows property to be transferred to new owners without Notice to the previous owners:

> **"the rule in this state [is] that defects in following the notice provisions of the tax sale statue may give an injured party a claim for damages, but will not render the tax sale or the deed void therefrom void...."** *GE Capital* Mortgage *Services, Inc., supra.*

Georgia law allows the property to go to the purchaser regardless whether notice provisions were followed. This is directly in conflict with the due process requirements, "No property **shall...**"

Coupled with the fact that the Sheriff is not required to give notice, notice being only directory, and that lack of Notice still allows the property to go to the purchaser, with the only recourse against the sheriff, a double violation of constitutional requirements both of the United States Constitution and the Georgia Constitution occurs.

This unconstitutional legal determination has had a profound effect on an enormous amount of people and their properties in Fulton County, Georgia and has allowed firms such as Foxworthy, Inc., to relentlessly plunder the county by stealthily acquiring properties, without the property owner being aware of what was happening and then being able to rest on the laurels of the Georgia's Supreme Court's Decision in *Haden, supra*, revitalized by *Harper, supra,* opining that notice was not necessary and once property is sold on the courthouse steps the only recourse to the previous owner is against the Sheriff for a wrongful sale.

CONCLUSION

Petitioner brings to the attention of the court the following decision:

> **"Shall" undoubtedly ought to be construed as meaning must," for the purpose of sustaining or enforcing an existing right. *West Wisconsin R. Co. v. Foley,* 94 U. S. 100, 103, 24 L.Ed. 71**

Petitioner Gray and others were before the inferior courts with a substantive right from the start and were deprived of an appeal along with substantive rights of property under color of court rule.

The due process requirements (Notice) are severely impaired and have affected many citizens of Fulton County, Georgia.

The petition for a writ of certiorari should be granted.

December 04, 2003
Resubmitted February 15, 2004

Respectfully Submitted,

Charles Gray
216 Oak St.
Hogansville, Ga 30230

Appendix I

THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FOXWORTHY, INC., A Corporation, Plaintiff/Petitioner	Civil Action File
Vs.	No. 2002-CV-51576
A TRACT OF LAND, BEING KNOWN AS 897 EDGEWOOD AVENUE, ATLANTA, FULTON COUNTY, GEORGIA, BEING A/K/A T. P. ID. 14-014-0010-24-3; AND AS THEIR RESPECTIVE CLAIMS APPEAR: JOHN B. NELSON (AMBASSADOR); BONNIE L. DEES; CHARLES R. GRAY; ANCHOR MORTAGE SERVICES; THE CITY OF ATLANTA, GEORGIA; AND ALL OTHER PARTIES; KNOWN OR UNKNOWN, WHO HAVE OR CLAIM ANY ADVERSE OR POSSESSION RIGHT, TITLE OR INTEREST IN THE SUBJECT PROPERTY, Defendant/Respondents	

FINAL JUDGMENT AND ORDER

Upon this court's consideration and review of the Special Master's Report, based upon such Special Master's Hearing, and upon consideration and review of the Special Master's Findings of Fact, the refernced Special Master's Findings of Fact is approved and

adopted by this Court. Further, upon this court's consideration and review of the Special Master's Report, such Report is hereby incorporated by reference into this Final Judgment and Order of this Court.

This Final Judgment and Order is entered pursuant to all provision of O.C.G.A. §§ 23-3-44, and §§ 23-3-60 - 72 *et seq.*, and this decree conclusively establishes this title of the real property which is the subject of this particular action, as set forth in this Order, as against all the world, subject only the interests owned by the named Petitioner herein, as set forth in the Special Master's Findings of Fact.

1.

Based upon such Special Master's Findings, and Holdings, the Court denies Respondent Gray's Motion to Dismiss and for a temporary or permanent Injunction.

2.

Based upon such Special Master's Findings, the Court holds that Charles Gray has no standing to contest the tax sale and subsequent barment proceedings, as he by his own admission is but a tenant "caretaker" for the owner, John B. Nelson, and Mr. Gray has no other right, title or interest in or to the Respondent Property. The Court therefore grants Petitioner's Motion to hold that Mr. Gray has no standing to contest such Quiet Title Petition.

3.

Based upon the foregoing, the Court adopts the Special Master's Holdings, and the Court holds, therefore, that no one, including Mr. Gray and/or Mr. Nelson, has ever made the requisite tender of the statutory redemption amount. It is the settle law in this state that any party seeking to set aside or void a tax sale, or to attack the legality of any such sale, must-as a

prerequisite thereto, make a tender of the required redemption amount.[1]

4.

Based upon the foregoing, the Court adopts the Special Master's Holdings, and the Court holds that, even if John B. Nelson was not served with the notice set out in O.C.G.A. §§ 48-3-9 & 10, the lack of such notice would not change the outcome of this case, and the granting to Petitioner of Petitioner's Quiet Title claims following such tax sale and subsequent barment proceedings.[2]

5.

The Court specifically adopts by reference and incorporates herein, paragraph number 5 of the Special Master's Findings of Fact. Accordingly, the Court orders and directs Mr. Nelson and Mr. Gray that no personal attacks on Mr. Blanton, and on the various judges and court officers involved in this cases, including demeaning, derogatory and inflammatory *ad hominum* allegations (the "personal attacks") upon such individuals, are to be included in any further and future filings with the Court. If any personal attacks are included, the Court upon motion of any party so affected will strike such filings.

6.

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1 O.C.G.A. §48-4-47; *see e.g.*., Durham v. Crawford, 196 Ga. 381, 26 S.E.2d 778 (1943); *See also*, Machen, *et al.* v. Wolande Management, Inc., 271 Ga. 163 (1999).

2 *See, for example*, GE Capital Mortgage Services, Inc. v. Clack, *et al*, 271 Ga. 82; 515 S. E. 2d 619; Harper v. Foxworthy, *et al.*, 254 Ga. App. 495 (562 S.E.2d 736) (2002): "It is '**the rule in this state that defects in following the notice provisions of the tax sale statute may give an injured party a claim for damages [against the Sheriff', but will not render the tax sale or the deed therefrom void.**'" Clack, *infra*, at 83 (1) (a). [Emphasis added]

Accordingly, the Court finds and holds that Fee Simple title in and to the Respondent Property parcel of land is vested into Petitioner(s) herein, **Foxworthy, INC.,** by virtue of the Tax Sale, and subsequent Tax Sale Deed, as referenced in the Findings of Fact above.

7.

The title into the Petitioner, is subject only, as may be applicable, to the following exceptions: (a) Any unpaid real estate ad valorem taxes, if any, which have come due and payable since the final stated date for bar of the equity of redemption of the Respondent Property by virtue of such barment proceeding; and (b) All easements, restrictions, covenants and right of way agreements of record.

8.

The Court expressly holds that any lien in favor of the City of Atlanta for ad valorem taxes, for sanitary assessments and water bills, and/or any demolition liens whether or not such liens(s) are a matter of public record in the office of the records of the Clerk of the Superior Court]-any or all of which lien(s) have accrued or come due as of the year in which the barment proceeding took place-are by operation of law cut off by the tax sale and the subsequent barment proceeding to foreclose the equity of redemption; therefore such lien(s) are of no further legal force or validity.

9.

The Court expressly orders the Clerk of the Superior Court of Fulton County to record the original of the Final Order of this Court, in the public Deed Records of this county, as well as the Special Master's Report upon payment of the recording costs for the same. The recording of the Final Order shall be cross-referenced to the recorded Tax Sale Deed(s), as set out, recorded in Deed Book 29816, page 298, Fulton County, Georgia records; as subsequently re-recorded as a Corrective Tax Deed, at Deed Book 30074, page 43, Fulton County, Georgia Public Deed Records, by marginal reference entered upon such document, as such

instruments are referenced herein. The recording of such Final Order, furthermore, shall be and act as a muniment of title.

10.

The Court awards and directs the payment of the Special Master's fees, to be assessed and paid as follows: the Petitioner shall pay all such Special Master's fees.

AS SO ORDERED, THIS 27TH OF NOVEMBER, 2002

Stephanie Manis/ss
Judge Stephanie Manis
Judge, Superior Court,
Fulton County, Georgia

Copies to:

Order Submitted By:

B. L. Z./ss
Barry L. Zimmerman, Esq.
As the Special Master

Terry Blanton, Esq.
Charles Gray
City of Atlanta Law Dept.
Bonnie L. Dees
John B. Nelson

EXHIBIT "A"
Legal Description

All that tract or parcel of land lying and being in Fulton County, State of Georgia, in Land Lot 14, of the 14th District of Fulton County, Georgia, being known as 897 Edgewood Avenue, Atlanta, Georgia; and being also known as and having Tax Parcel I.D. No. 14-014-0010-024-3; and being the same property as conveyed to John B. Nelson, Ambassador, by quit-claim deed recorded in Deed Book 20625, page 42, aforesaid County Deed Records.

Appendix II

THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FOXWORTHY, INC., A Corporation, Plaintiff/Petitioner	] Civil Action File] No. 2002-CV-51576
Vs.	]
A TRACT OF LAND, BEING KNOWN AS 897 EDGEWOOD AVENUE, ATLANTA, FULTON COUNTY, GEORGIA, BEING A/K/A T. P. ID. 14-014-0010-24-3; AND AS THEIR RESPECTIVE CLAIMS APPEAR: JOHN B. NELSON (AMBASSADOR); BONNIE L. DEES; CHARLES R. GRAY; ANCHOR MORTAGE SERVICES; THE CITY OF ATLANTA, GEORGIA; AND ALL OTHER PARTIES; KNOWN OR UNKNOWN, WHO HAVE OR CLAIM ANY ADVERSE OR POSSESSION RIGHT, TITLE OR INTEREST IN THE SUBJECT PROPERTY, Defendant/Respondents	]

SPECIAL MASTER'S REPORT, INCLUDING FINDINGS OF ACT AND HOLDINGS OF LAW

THE WITHIN AND FOREGOING MATTER has heretofore been submitted to the Special Mater by Order of the Hon. Stephanie Manis. The Special Master notes

that both counsel for the Petitioner, and one of the named individual Respondents, Charles Gray, has filed several and various motions and/or cross -motions[1], and each has replied to the other's motion. The Special Master notes that Petitioner, through counsel, requested a hearing on that party's Motion(s). The Special Master took under review and has considered all such motions, as well as the replies by opposing counsel, or Parties Respondent.

Furthermore, on August 2, 2002, the Special Master convened a hearing at Petitioner's request on the several and various motions as filed by Petitioner. At such hearing, the Special Master took testimony from Charles Gray, and John B. Nelson, and heard statements in his place from C. Terry Blanton, counsel for Petitioner Foxworthy, Inc. The Special Master took notice of a Motion in Limine and "Notice to Provide Copies to Special Master" as filed by Mr. Blanton, which document set out the ten (10) or so filings with the Federal District Court for the District of Colorado, including, without limitation, the three (3) separate orders as signed and authorized by Judge John Kane, Senior Judge for such federal district court [the "Federal Court Filings"].

Additionally, the Special Master has considered all of the several and certain documents, affidavits, and filings as made by the Petitioner, and Respondent Charles Gray and /or John Nelson; including specifically the document entitled "Notice to Cease and Desist."

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[1] Petitioner's Counsel filed a Motion for Default Judgment and/or Judgement on the Pleadings. and/or a Motion for Summary for Summary Judgement; Respndent Gray filed Motion(s) to Dismiss, and for a Temporary and Permanent Injunction. In addition,both Gray and Respondent John B. Nelson filed an attempted "Notice of Removal" to the Federal District Court for the District of Colorado.

It appears to the Special Master from the pleadings, the factual findings and the review of the Subject Property by the Special Master that Petitioner is entitled to relief. Therefore, the Special Master makes the following Findings of Fact, which arise as a result of the testimony, the filings, and/or undisputed or uncontroverted facts; and based upon such factual Findings, rules on the several and various motions; and based thereupon makes certain Holdings of Law, and submits the enclosed proposed Final Order and Decree to the Court.

FINDINGS OF FACT

The Special Master finds as a matter of fact as follows:

1.

The parcel of land for which the Petition to Quiet Title has been brought is identified as 897 Edgewood Avenue, Atlanta, Fulton County, Georgia a/k/a (the "Respondent Property"). The Special Master finds that this court therefore has the jurisdiction and the venue over this Quiet Title action.

1.

The Special Master finds that Service of Process upon the named Respondent Property was perfect by personal service.

2.

As to Mr. Gray, the Special Master makes the following specific findings:

(a)

Respondent Gray was duly and properly served by service of process on or about April 17, 2002. As of the date of the Special Master's Hearing, Respondent Gray had not filed any answers, denying the material allegations and contentions of the Quiet Title Petition.

Accordingly, at this time Mr. Gray is in irrevocable default. The Special Master finds that there has been no motion filed by Respondent Gray to re-open such default for good reason shown.

(b)

Respondent Gray is not the owner of the Respondent Property, 897 Edgewood Avenue. Indeed, Respondent Gray by his own admission, *in judicio*, is nothing more than an occupant- "caretaker" of the Respondent Property.

(c)

Respondent Charles Gray is not an attorney, admitted before the Georgia State Bar, and/or licensed to practice law in the State of Georgia; and thus may not file any pleadings or filings for, nor make any appearance on behalf of, John B. Nelson.

(d)

Respondent Gray has never tendered nor made any attempt to tender the statutorily mandated redemption premium amount to Petitioner, or into the registry of the Court.

(e)

Respondent Gray has never raised any issues contesting that Gray was not properly and duly served with such notice as may have been required by law, in conjunction with either the Sheriff's tax levy and sale proceeding, and/or the barment proceeding, and/or the Quiet Title Petition. Gray did raise an issue about the purported lack of notice to him as a tenant of the transfer of the ad valorem tax fi fa. The Special Master finds that such issue is now moot, as the execution and delivery of the tax deep to a *bona fide* purchaser for value, as a matter of law, raises the presumption that the levy and sale proceeding is valid.

(f)

After ruling that Mr. Gray did not have standing this matter, Mr. Gray requested that he be allowed to make a "special appearance." The Special Master denied such request, but allowed Mr. Gray, without objection from Petitioner's counsel, to remain in the Special Master's hearing and participate as a witness.

(g)

As to Mr. Gray's Motion for Temporary/Permanent Injunction, as referenced in footnote 1 above, the Special Master notes first of all that Mr Gray did not have any standing to file such a motion. Next, the Special Master finds that Mr. Blanton, counsel for Petitioner, stated in his place that he never received a conformed copy of Judge Westmoreland's Order to file a response within a date certain as to such Injunction Motion; the Special Master finds that such Motion was effectively responded to by My Blanton, in his response to Mr. Gray's Motion to Dismiss; and ultimately, the Special Master finds that such motion is moot based upon the Special Master's Findings of Fact and Holdings of Law as to Mr. Gray's status and lack of standing otherwise.

(h)

Finally, the Special Master has taken note that since the Special Master's hearing as referenced herein, Mr. Gray, although found by the Special Master not to have standing in this action, filed a motion/pleading in which he sated that this Court did not have jurisdiction because the Federal Court filings had been dismissed, rather than "remanded". In that regard, the Special Master notes that Mr. Blanton, counsel for Petitioner, filed a motion with the Federal District Court for the District of Colorado requesting that Judge John Kane withdraw his order of dismissal, and remand the case to this court, *nunc pro tunc.* Thereafter, Mr. Blanton has furnished to the Special Master a copy of an Order signed by Judge Kane, and filed, as of September 23, 2002. Such Order by its express terms and provisions

remanded the attempted removal case from the Federal District for Colorado back to this Court, as effective as of June 27, 2002.

3.

As to Mr. Nelson, the Special Master makes the following specific findings:

(a)

The Special Master finds that Mr. Nelson did not ever file with the office of the Tax Commissioner of Fulton County, any ad valorem taxes return for the Respondent Property, in his name as the owner, giving his mailing-billing notice address, as required by O.C.G.A. § 48—5-6.[2]

(b)

Respondent Nelson was duly and properly served by service of process on or about May 25, 2002.[3] **As of the date hereof, Nelson has not filed any document that could be construed and qualified as an answer, denying the material allegations and contentions of the Quiet Title Petition. Accordingly, at this time Mr. Nelson is in irrevocable default. The Special Master finds that there has been no motion filed by Respondent Nelson to re-open such default for good reason shown.**

(c)

Nelson after being so personally served, on or about June 26, 2002, filed a document entitled "Notice of Removal & Petition for Writ of Certiorari" [the "Removal Notice"] in the Federal District Court for the District of Colorado. This document sought by its language and terms to remove this instant case to the jurisdiction and venue of such federal district court. At the time of such filing, Nelson was already in default on

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[2] *See,* Transcript of Special Master Hearing [T.], p. 49.

[3] *See,* T., p. 82.

filing any answer or other pleading, denying the material and substantive allegations of the Quiet Title Petition.

(d)

Since the date of June 26, 2002, there have been ten (10) different documents received by Petitioner's counsel and subsequently field with the Special Master, all of which have the federal district court style of the matter, as set out on such Removal Notice, including the Removal Notice, and five (5) separate filings by Respondent Charles Gray [hereafter, either jointly or severally-as the case may be-the "federal couirt filings"]. Additionally, there are three (3) separate orders by Judge John L. Kane, Senior U. S. District Court judge. Such order (s) ordered the dismissal of the Removal Notice, the closing out of any such federal court case, and finally the last such order admonished and ordered the named Respondents John Nelson and/or Charles Gray: "Do not file any further documents with this court."

(e)

The other document filed under the name of 'John B. Nelson' in the federal district court was a purported response to Petitioner's First Request for Admissions (served along with the original Quite Title Petition)[4], as attached to and served with the original Quiet Title Petition. Although Mr. Nelson filed such response to such First Request in the Federal District Court of Colorado, that response such as it is, was not verified, nor has Mr. Nelson every filed such response-whether verified or not-with the Clerk of the Superior Court of Fulton County, nor with the Special Master. The Special Master finds therefore that Mr. Nelson did not respond to such Requests for Admissions within forty-five (45) days from May 25, 2001 [5], and therefore such requests for admissions are all deemed admitted as a matter of law.

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[4] *See*, T., p. 82.

[5] *See*, T., p. 82.

A copy of such First Request for Admissions is attached as an exhibit to this Special Master's Report.

(f)

None of the documents filed by Nelson in the federal district court for the District of Colorado were sworn to or verified, nor did either document filed by Nelson constitute any answer, denying or controverting the material and substantive allegations of the Quiet Title Petition, as to Respondent John B. Nelson.

(g)

Respondent Nelson has never tendered nor made any attempt to tender the statutorily mandated redemption premium amount to Petitioner, in order to attempt to redeem the Subject Property from the referenced tax sale, nor has Nelson made even any attempt to make such tender into the registry of the Court; and indeed, Nelson indicated to the Special Master that he would not make any tender of the statutory redemption amount.[6]

(h)

Respondent Nelson has never raised any issues contesting that Nelson was not properly and duly served personally with service of process of the Quiet Title Petition; indeed, in his federal court filings, Nelson admits that he was served personally with the Quiet Title Petition on May 25, 2002.

(i)

The Respondent Property was sold, on December 5, 2000, pursuant to a Writ of Fieri Facias issued on Levy and Sale for unpaid State & county ad valorem taxes, by the Sheriff of Fulton County, Georgia. At the time of such sale, the Respondent in fi fa was named as "John B Nelson, Ambassador". This named individual had taken title to the Respondent Propery, by Quit-claim

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6 *See*, T., pp. 67, 72.

Deed, recorded in Deed Book 20625, page 42, Fulton County Public Deed Records. A copy of such deed was attached to the original Petition as Exhibit "D".

(j)

At such referenced tax sale, the highest bidder was Foxworthy, Inc., who subsequently took title to the property by Tax Sale Deed, executed and delivered by the Sheriff as such sale, such deed being recorded at Deed Book 29816, page 298, Fulton County, Georgia records; as subsequently re-recorded as a Corrective Tax Deed, at Deed Book 30074, page 43, aforesaid County deed records. A copy of each such deed(s) was attached to the original Petition as Exhibit "E".

(k)

The Special Master finds that Mr. Nelson had personal knowledge of the pendency of the statutory barment proceeding by not later than March 4, 2002; and that he had received by facsimile transmission a copy of the redemption amount calculation notice by not later than March 13, 2002.[7] Nelson's right to redeem such property from such tax sale expired and was extinquished on or about March 17, 2002.

(l)

As to the above referenced tax levy and sale, Petitioner, or Petitioenr's agent or attorney hs completed those actions [the "barment" actions] as requied by all applicable provisions of the Georgia Code, to properly foreclose the right of the Respondent Nelson to redeem the Respondent Property from the referenced tax sale, O.C.G.A., §§48-4-45-46.

4.

The Special Master heard from Mr. Blanton on his Motion in Limine, as to the derogatory and inflammatory *ad homium* allegations set out by both

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[7] *See*, T., pp. 64, 66.

Mr. Nelson and Mr. Gray, in their several and various filings with the Federal District Court and the Superior Court of Fulton County. After hearing from Mr. Nelson on such statements, the Special Masters finds that such statements are in fact personal attacks upon Mr. Blanton, and/or upon several and various judges and court officers. Accordingly, the Special Master instructed and directed Mr. Nelsonn that no such derogatory and inflammatory *ad hominum* allegations were to be included in any further and future filings with the Court; and if any such were included, the Special Master would strike such filing upon motion of the other party(ies).

5.

The Spcial Master finds therefore that as to Respondents Gray and Nelson, all of the material allegations of the Quiet Title Petition are deemed admitted; and accordingly, all material allegations of te Petition are deemed to be true, correct and factual as to these two named Respondents.

6.

C. Terry Blanton, Esq., on behalf of th Petitioner, tendered certain documents into evidence. Those documents were admitted into evidence by the Special Master without opposition. Those documents are: (1) Affidavits from a court appointed private process server, documenting personal service upon those Respondents so served; (2) a Publisher's Affidavit from *The Fulton County Daily Report*, which shows service by publication on all the Respondents who were to be served by such publication notice; and (3) a conformed copy of the Tax Deed(s)-filed as Exhibit "D" with the Petition-executed and delivered pursuant to the tax sale (the "tax sale").

7.

The Special Master finds that the only Respndent to file an actual answer was the City of Atlanta. Other than the City, no respondent filed an actual answer or any other responsive filing, which on its fact controverted or denied the allegations of the Petition; and that therefore all material allegations of the Petition are deemed to be true, correct and factual as to all the Respondents, other than the City of Atlanta.

8.

As to the City of Atlanta, specifically, the Special Master finds that the material allegations of the petition are true. The Special Master expressly finds that the City was properly and timely notified of the statutory proceeding to bar the equity of redemption, and that the City did not redeem the Respondent Property from the referenced tax sale.

9.

The Special Master finds that the Petitioner completed, or had completed, in due and proper substance and procedure the proceeding to bar the equity of redemption from tax sale, as against all parties entitled to notice of such 'barment' proceeding, so as to bar the redemption of the Subject Property by any party in interest.

10.

The Special Master finds that the Petitioner took title to the Subject Property, by virtue of the Tax Sale Deed, as set out above in the Findings Of Fact; and by virtue of the completion in due and proper form of the foreclosure of the equity of redemption, pursuant to O.C.G.A. §48-4-40 – 46, *et seq.*

BASED UPON SUCH FINDINGS OF FACTS, The Special Master enters the following Special Master's Holdings of Law. The Special Master has submitted herewith a Proposed Final Order, which the Special Master recommends to the Court; and the Special

Master moves that the Court adopt the Proposed Order as the Order of Court, as stated:

SPECIAL MASTER'S HOLDINGS OF LAW

1.

Based upon such Findings and Holdings, the Special Master denies Respondent Gray's Motion(s) to Dismiss and for a Temporary or Permanent Injunction.

2.

Based upon such Findings, the Special Master holds that Charles Gray has no standing to contest the tax sale and subsequent barment proceedings, as he by his own admission is but a tenant "caretaker" for the owner, John B. Nelson, and has no other right, title orinterest in or to the Respondent Property. The Special Master grants Petitioners Motion that Mr. Gray has no standing to contest such Quiet Title Petition.

3.

Furthermore, the Special Master holds that no one, including Mr. Gray and/or Mr. Nelson, has every made the requisite tender of the statutory redemption amount.[8] It is the settled law in this sate that any party seeking to set aside or void a tax sale, or to attack the legality of any such sale, must, as a prerequisite thereto, make a tender of the required redemption amount. "Moreover, a tender on an offer to redeem property from taxes not only 'must be made in due time and matter,' but must 'be continuous,' with 'a continuous offer to

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[8] O.C.G.A. §48-4-47; *see also,* Durham v. Crawford, 196 Ga. 381, 26 S. E.2d 778 (1943: "It is also the general rule. under the maxim tha the who would have equity must do equity, not only that the party seeking equitable relief [from a tax sale] shall have paid or tendered the [redemption] sum due to the other party, but that he shall have done so 'before the filing of the suit…" *See, e.g.* Machen, *et al. v.* Wolande Management, Inc., 271 Ga. 163 (1999).,

pay; and if such continuity is not otherwise shown, at least the bringing of the money into court on the filing of the suit is necessary in place of the continuous offer by pleading."[9]

4.

Even if Mr. Nelson were not served with the tax levy and sale notice, the Special Master holds that the tax levy and sale proceeding and the tax deed issued thereupon are not voidable or void, as a matter or law. First, by Mr. Nelson's failure to comply with the statutory provisions of O.C.G.A. §48-5-6, which requires the owner of property to return such property at its fair market value for the purposes of ad valorem taxation, it is probably that failure on his part thus provides the explanation for why Mr. Nelson would not have received any such levy and sale notice. Both the applicable statutes and the case law make it absolutely clear that this duty to return such property for ad valorem tax purposes is a statutory mandate.[10]

5.

Moreover, and in any event, even if John B. Nelson was not served with notice set out in O.C.G.A. §§ 48-3-9 & 10, the lack of such notice does not change the

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[9] Durham v. Crawford, *infra;* Clower v. Fleming, 81 Ga. 247 (3), 253, 254 (7 S.E. 278) *See also*, the following language from *Pindar, Georgia Real Estate Law:* "Equity will not ...cancel a defective tax xale until the [putative] owner tenders the amount of tax due and payable." [§ 4-53, *Pindar, infra*], and "...where the Respondent [in fi fa] has not paid or tendered the [proper redemption] amount....admittedly due, relief will be denied." § 4-54, *Pindar, infra,* citing e.g., Derrick v. Campbell, 219 Ga. 795 (1964); *See also*, Register v. Langdale, 226 Ga. 82, 84 (1970).

[10] *See* O.C.G.A. § 48-5-6, O.C.G.A. §48-5-15; *see also*, McLennan v. Undercofler, 222 Ga. 302, 149 S.E.2d, 705 (1966); *see generally,* CC Office Assocs., v. Dekalb County, 219 Ga. App. 101 464 S.E.2d 243) (1995).

outcome of this case. In G. E. Capital Mortgage Services, v. Clack[11], the Supreme Court stated as follows:

> **"[T[he rule in this state [is] that defects in following the notice provisions of the tax sale statute may give an injured party a claim for damages, but will not render the tax sale or the deed therefrom void. [Cits.] Sizemore and Brown, 179 Ga. App. 594 (347 S.E.2d 345) (1986)."[12]**

6.

Based upon such Findings and Holdings, the Special Master grants Petitioner's Motion for the entry of a Default Judgment and/or a Judgment on the Pleadings, and/or a Summary Judgment as against all the named Respondents.

7.

The Special Master finds and hold that Fee Simple title in to the Subject Property parcel of land is vested into Petitioner herein, FOXWORTHY, INC., by virtue of the Tax Sale, and subsequent Tax Sale Deed, as referenced in the Findings of Fact above.

8.

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[11] GE Capital Mortgage Services, Inc., v. Clack, *et al*,. 271 Ga 82: 515 S.E.2d 619 (1999).

[12] In the most recent appellate decision dealing with this specific issue, in which Petitioner herein, Foxworthy, Inc., was the prevailing party, the Court of Appeals found and held that the serving of the notices under O.C.G.A. §§ 48-3-9 10 imposed upon the Sheriff only a "directory" duty, not a mandatory one. Harper v. Foxworthy, Inc., *et al*, 254 Ga. App. 495; 562 S.E.2d 736 (2002). The Court in its opinion stated , in pertinent part as follows: "Moreover, even in [Nelson] was not provided the requisite notice of the tax sale, this failure wull not suffice to set aside the tax sale of [the]property. GE Capital Mtg. Services v. Clack, *infra;* Haden v. Liberty Co., 183 Ga. 209, 211 (1) (188 SE 29) (1936). It is **'the rule in this state that defects in following the notice provisions of the tax sale statute may give an injured party a claim for damages, but will not render the tax sale or the deed therefrom void.' (Citations omitted.)** ***Clack,*** *infra at* 83 (1)(a).

The title into the Petitioner, is subject only, as may be applicable, to the following exceptions: (a) Any unpaid real estate ad valorem taxes, if any, which have come due and payable since the final stated date for bar of the equity of redemption of the Subject Property by virtue of such barment proceeding; and (b) All easements, restrictions, covenants and right-of-way agreements of record.

9.

The Special Master expressly holds that any lien in favor of the City of Atlanta, for ad valorem taxes, for sanitary assessments and water bills, and/or any demolition liens [whether or not such lien(s) are a matter of public record in the office of the records of the Clerk of the Superior Court] – anyor all of which lien(s) have accrued or come due as of the year in which the barment proceeding took place-are by operation of law cut off by the tax sale and the subsequent barment proceeding to foreclose the equity of redemption; therefore such lien(s) are of no further legal force or validity.

10.

The Special Master holds that the Clerk of the Superior Court of Fulton County is directed to record the original of the Final Order of the Court, in the public Deed Records of this county, upon payment of the recording cost for the same. The recording of the Final Order shall be cross-referenced to the recorded Tax Sale Deed(s), as set out, recorded in Deed Book 29816, page 298, Fulton County, Georgia records; as subsequently re-recorded as a Corrective Tax Deed, at Deed Book 30074, page 43, Fulton County, Georgia Public Deed Records, by marginal reference entered upon such document, as such instruments are referenced herein. The recording of such Final Order, furthermore, shall be and act as a munimnet of title.

The Special Master asks and holds that the court award all costs and the Special Master's fees, to be assessed against the Petitioner.

THIS 14 Day of Nov., 2002.

RESPECTFULLY SUBMITTED.

b L. Z./ss

Barry L. Zimmerman, Esq.
As Special Master
State Bar No. 785125

EXHIBIT "A"
Legal Description

All that tract or parcel of land lying and being in Fulton County, State of Georgia, in Land Lot 14, of the 14th District of Fulton County, Georgia, being known as 897 Edgewood Avenue, Atlanta, Georgia; and being also known as and having Tax Parcel I.D. No. 14-014-0010-024-3; and being the same property as conveyed to John B. Nelson, Ambassador, by quit-claim deed recorded in Deed Book 20625, page 42, aforesaid County Deed Records.

Appendix III

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

FOXWORTHY, INC.,)	**FILED IN OFFICE**
A Corporation,)	**January 16, 2003**
Plaintiff/Petitioner,)	**Deputy Clerk Superior Court**
)	**Fulton County, GA**
)	
v.)	**CIVIL ACTION FILE**
)	**NO. 2002CV 51576**
)	
A TRACT OF LAND,)	
BEING KNOWN AS 897)	
EDGEWOOD AVENUE.,)	
ATLANTA, FULTON)	
COUNTY, GEORGIA,)	
Et. Al,)	
Defendants/Respondents.)	
)	

ORDER DENYING DEFENDANT CHARLES GRAY'S MOTION FOR EXTENSION OF TIME AND MOTION FOR RECONSIDERATION

This action was brought by Plaintiff/Petitioner Foxworthy, Inc. ("Foxworthy") to quiet title to certain property located on Edgewood Avenue. A final hearing before the Special Master occurred on or about August 2, 2002. The Special Master issues his report to the Court, and, pursuant to O.C.G.A. § 23-3-67, this Court entered the final decree on November 27, 2002, adopting the Special Master's report. This case is

currently before this Court on Defendant Charles Gray's motion for extension of time and motion for reconsideration.

(1) Motion for Extension of Time

In his motion, Defendant Gray requests additional time to file a motion for reconsideration, based upon the Court's alleged delay in mailing a copy of the final order to him. After review, this Court finds no reason to grant the motion. Although Defendant Gray apparently believes that there is some time limit to filing a motion for reconsideration, this is not accurate. In fact, the Civil Practice Act does not contemplate motions for reconsideration before the Superior Court. A trial court does, however, retain the power within the same term of court "to revise, correct, revoke, modify, or vacate ..." any judgment or order for good cause, excluding only those judgments founded upon verdicts. See, Pekor v. Clark, 236 Ga. 457 (1967); In re Vincent, 240 Ga. App. 876 (1999); Southern Drayage, Inc., v. Williams, 216 Ga. App. 721 (1995); O.C.G.A. § 9-11-60(h). As Defendant Gray's motion was filed within the same term of court, his motion for extension of time is hereby **DENIED AS MOOT.**

(2) Motion for Reconsideration

Initially, this Court notes that Defendant Gray requested findings of facts and conclusion of law in ruling on the motion for reconsideration. O.C.G.A. § 9-11-52 provides:

> (a) in ruling on interlocutory injunctions and in all nonjury trials in courts of record, the court shall upon request of any party made prior to such ruling, find the facts specially and shall state separately its conclusions of law. If an opinion or memorandum of decision is filed, it will be sufficient if the findings and conclusions appear therein. ...
> (b) **This Code section shall not apply** to actions involving uncontested divorce, alimony, and custody of minors, nor **to motions** except as provided in [§9-11-41(b)]. (Emphasis added).

As this is a motion for reconsideration, not involving dismissals under § 9-11-41, no findings of fact or conclusions of law are required. Therefore, this request is DENIED.

Additionally, Defendant Gray filed a motion for reconsideration based upon a number of grounds, including several personal attacks on the Special Master, the attorneys involved and this Court. The Plaintiff responded and objected to the motion. After review of the motion for reconsideration and the record in this case, this Court does

not find any grounds for reconsideration of its final decree adopting the Special Master's report. Therefore, Defendant Gray's motion for reconsideration is hereby **DENIED.**

SO ORDERED, this 16 day of January, 2003.

_____ss
Judge Stephanie B. Manis
Superior Court of Fulton County
Atlanta Judicial Circuit

Copies to:
Barry Zimmerman, Esq.
Terry Blanton, Esq.
City of Atlanta Law Department
Charles Gray, pro se
Bonnie L. Dees, pro se
John B. Nelson, pro se

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APPENDIX IV

(SEAL) SUPREME COURT OF GEORGIA

Case No. S03A1372

Atlanta, July 14, 2003

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CHARLES GRAY v. FOXWORTHY, INC., et al.

Appellant filed this direct appeal seeking review of the trial court's November 27, 2002 order entering final judgment on appellee's quiet title action. Before filing this notice of appeal, however, appellant sought reconsideration in the trail court and it was not until after the trial court denied his motion, by order entered January 16, 2003, that he filed the instant notice of appeal. Although this Court would have subject matter jurisdiction over the case under its tile to land jurisdiction, motions to reconsider do not toll the time for filing a notice of appeal, see OCGA Sec. 5-6-38(a), and therefore the instant appeal is untimely. For that reason, the appeal must be and hereby is dismissed. See Williams v. Keebler, 222 Ga. 437 (150 SE2d 674) (1966); Law Offices of Johnson & Robinson v. Forston, 175 Ga. App. 706 (334 SE2d 33) (1985), *overruled on other grounds by* MMT Enters., Inc. v. Cullars, 218 Ga. App. 559 (462 SE2d 771)(1995)

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract

(SEAL) from the minutes of the Supreme Court of Georgia
Witness my signature and the seal of said court
hereto Affized the day and year last above written.

Lynn M. Stinchcomb (signature), Chief Deputy Clerk

APPENDIX V

SUPREME COURT OF GEORGIA

Case No. S03A1371 Atlanta, September 05, 2003

The Honorable Supreme Court met pursuant to adjournment.

The following order was passed:

CHARLES GRAY v. FOXWORTHY, INC., et al.

Upon consideration of the Motion for Reconsideration filed in this case, it is ordered that it be hereby denied.

SUPREME COURT OF THE STATE OF GEORGIA

Clerk's Office, Atlanta

I hereby certify that the above is a true extract from the minutes of the Supreme Court of Georgia. Witness my signature and the seal of said court hereto affixed the day and year last above written.

Sherie M. Welch, Clerk